IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

OP.No. 32371 of 2000(D)

PETITIONERS:
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1. P.BALACHANDRAN, AGED 27 YEARS,
S/O. LATE SRI.S.PARAMESWARAN,
'SHOBHA BHAVAN', PARAPOTTA, KUNNAPUZHA P.O.,
TRIVANDRUM- 32.

2. A.SANTHA, W/O.LATE S.PARAMESWARAN
'SHOBHA BHAVAN' PARAPOTTA, ARAMADA P.O.,
KUNNAPUZHA, TRIVANDRUM 32.

BY ADV. SRI.P.V.MOHANAN
SRI.V.SANTHARAM

RESPONDENTS:
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1. AIR PORT DIRECTOR,
AIR PORT AUTHORITY OF INDIA,
NATIONAL AIR PORTS DIVISION,
SAFADAR JUNG. AIR PORT, NEW DELHI.

2. AIR PORT DIRECTOR,
THIRUVANANTHAPURAM AIR PORT,
THIRUVANANTHAPURAM.

3. THE SECRETARY,
MINISTRY OF CIVIL AVIATION & TOURISM
NEW DELHI.

BY ADV. SRI.K.L.NARASIMHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.55271/2000 IN OP. NO.32371/2000

CLOSED

29.06.2007 **SD/- T.R.RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION DT. 6.11.90.

EXT.P2:- COPY OF THE PROCEEDINGS NO.NAA./IV/E-19/2735 DT. 7.8.91.

EXT.P3:- COPY OF THE LETTER NO.AAI/NAD/TV/E.19/7363 DT. 16.3.99 .

EXT.P4:- COPY OF THE AFFIDAVIT DT. 22.3.99.

EXT.P5:- COPY OF THE PROFORMA APPLICATION.

EXT.P6:- COPY OF THE MEDICAL CERTIFICATE DT. 21.3.99.

EXT.P7:- COPY OF THE SALARY CERTIFICATE OF THE MOTHER OF THE PETITIONER DT. 22.3.99.

EXT.P8:- COPY OF THE PROCEEDINGS NO.AAI(AD)/TV/E.19/1609 DT. 20.6.2000 ISSUED BY THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE JUDGMENT IN OP. NO.7317/2000 DT. 4.7.2000.

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 32371 of 2000 (D)

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Dated this the 29th day of June, 2007

J U D G M E N T

The petitioners are the eldest son and the widow, respectively, of deceased Sri S.Parameswaran. It is submitted that the second petitioner died pending the original petition on 16/07/2005. The deceased Sri S.Parameswaran was working as a caretaker at Thiruvananthapuram Airport. Apart from the first petitioner, he had another son, Sri P.Ramachandran, who was a student at the time of filing of the original petition. The first petitioner is having the qualification of B.Com, Typing (Lower) and Diploma in Windows based office automation. Pursuant to the death of the father, family pension of Rs.575/- was sanctioned which has been revised thereafter. Apart from the terminal benefits by way of DCRG (29,500/-) and another amount of Rs.30,000/- towards CGEGIS, Rs.2,370/- as saving fund and Rs.17026/- towards CPF also have been paid, to the family of the deceased.

2. Being a dependent of the deceased, the first petitioner sought for appointment under the relevant scheme and by Ext.P2

the first petitioner was informed that the application has not been recommended by the Employment Assistance Committee. It appears that the petitioners pursued the matter again and by Ext.P3, they were directed to file an affidavit showing the present status of their family and to submit a proforma with necessary documents. The same was complied with by the petitioners. Exts.P5 and P6 represents the proforma and other details. Ext.P7 is the salary certificate of the second petitioner dated 22/03/1999 and the monthly salary was Rs.6051/-. Less deductions she was receiving a net salary of Rs.2,188/-. Ultimately, by Ext.P8, it was informed to the first petitioner that since the mother is employed and is in receipt of family pension and other terminal benefits, the first petitioner is not eligible for the employment assistance under the Employment Assistance Scheme. The petitioners assail the above order in this original petition.

3. Respondents 1 and 2 have filed a detailed counter affidavit wherein it has been pointed out that the first petitioner is not eligible for the employment assistance in view of the fact that the

second petitioner was employed and is in receipt of family pension and other terminal benefits.

4. The learned counsel for the petitioner submitted that even though the mother of the first petitioner was employed, she was getting only a net salary of Rs.2,188/-, as seen from Ext.P7, and the receipt of the family pension and other terminal benefits cannot defeat the rights of the first petitioner to get employment under the scheme. It is further pointed out that the application was filed in 1991 and the delay, if any, occurred, is because of the inaction on the part of the respondents. The learned counsel for the respondents argued that employment assistance, if any, can be given only if the family is in dire constraints and cannot pull on because of the loss of income consequent on the death of the breadwinner. Herein, the mother was already employed and was getting salary. Apart from that, family pension was also sanctioned along with the terminal benefits. The learned counsel also relied upon the decisions of the Apex Court reported in **State of J&K and others vs.Sajad Ahmed Mir** [(**2006) 5 SCC 766]** and **Union Bank of India and others vs.**

M.T.Latheesh [**(2006) 7 SCC 350]**. It was also pointed out that now 17 years have elapsed after the death of the father and, therefore, appointment cannot be claimed at this distance of time.

5. Going by the admitted facts, the mother of the petitioner (the deceased second petitioner) was employed at the time of the death of her husband. Even though Ext.P7 shows that the net salary was Rs.2,188/-, in the year 1999, she was drawing a monthly salary of Rs.6,051/- at that time. The deductions towards EPF, LIC etc. are also to be noticed while computing net salary. Apart from that when the mother is employed and she was getting salary along with the family pension and other benefits consequent on the death of the breadwinner, it is not a case where the family could not pull on because of the death of the late husband of the second petitioner. Major criterion in such claims, is the financial condition of the family and unless the financial condition is entirely penury such appointments cannot be made. Going by the principles stated in (2006) 5 SCC 766, it can be seen that once it is proved that inspite of the death of the breadwinner the family survived and substantial period is

over, there is no need to make appointment on compassionate grounds. Herein, Ext.P2 is dated 07/08/1991 and further proceedings were initiated by petitioners only in the year 1999. The right, if any, is not a vested right also. For all these reasons, the rejection of the claim by Ext.P8 cannot be faulted. The original petition fails and is hence dismissed.

However, learned counsel for the petitioner brought to my notice that as far as the terminal benefits of the deceased are concerned, further amounts are due and the eligible amounts have not been determined and disbursed so far. If any, further amounts are due, the first petitioner can file appropriate representation before the competent authority and on receipt of the same, a decision will be taken on its merits, in accordance with law, and eligible benefits, if any, will be disbursed without any further delay.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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J U D G M E N T

29th June, 2007